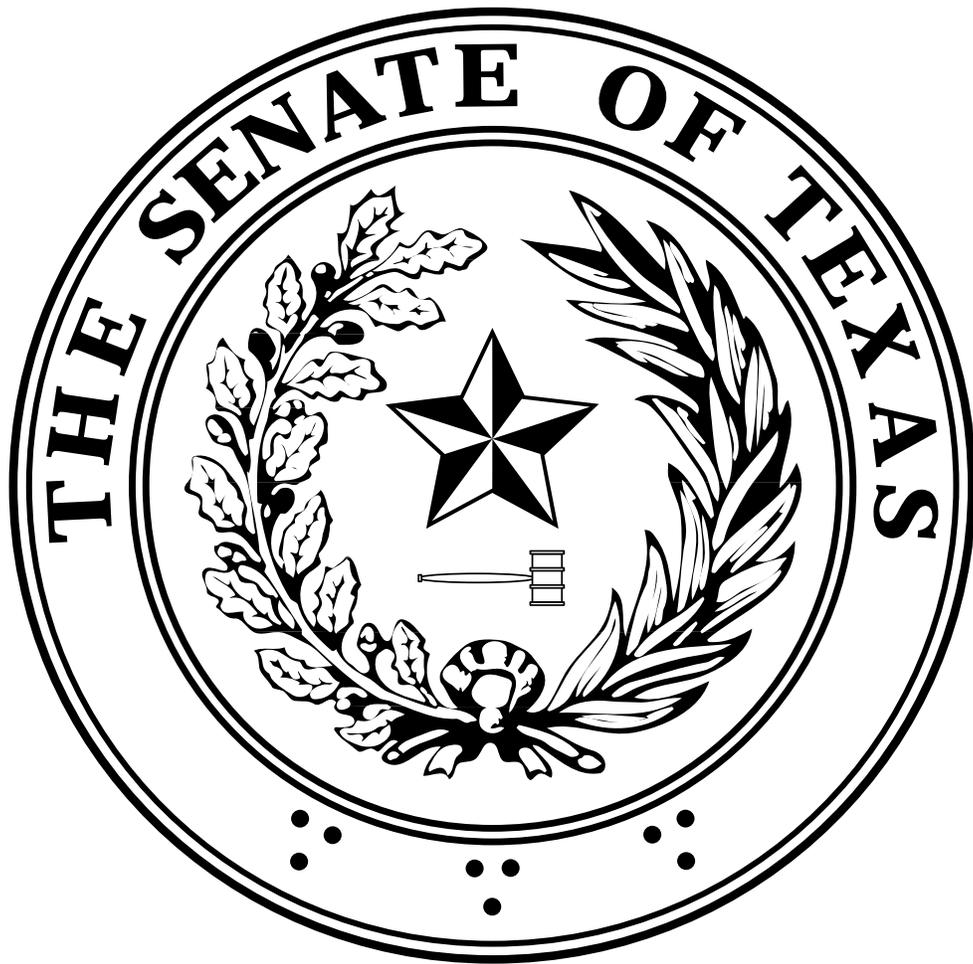


Senate Committee on State Affairs
Report to the 77th Legislature



Charge 2

Studying the Impact of Devolution on the State

Acknowledgments

The Senate State Affairs Committee would like to recognize all the people who assisted with this charge for their hard work without whose assistance this report would not be possible. In particular the committee would like to thank the following state agencies and their representatives: Texas Workforce Commission, Texas Department of Housing and Community Affairs, Texas Department of Human Services, Texas Department of Health, Texas Department on Aging, Texas Natural Resource Conservation Commission, the State Auditor's Office, and the Legislative Budget Board.

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 Recommendation 2

Executive Summary

The Charge:

Study the impact of devolution and other federal streamlining and efficiency efforts on major state agencies, including full-time equivalent employee (FTE) increases, major programmatic changes, and administrative costs to the state. The committee shall also study conflicts and overlaps among agencies resulting from federally devolved functions and responsibilities. The committee shall coordinate study of this issue with the Committee on Finance. The final preparation of the report will be the responsibility of the State Affairs Committee.

Findings:

While the federal government has devolved numerous programs to the state, the handing over of authority and flexibility which is key to successful devolution has not occurred. As a consequence, Texas has experienced mixed results from devolution.

Some programs such as the Social Services Block Grant were handed down with an amount of flexibility and authority that has allowed the state to better meet the goals of the program given Texas' unique characteristics. Nevertheless, the cost of attaining flexibility often has been a loss of funding from the federal level.

The federal government has devolved other programs only to a limited extent, restricting the state's ability to efficiently administer such programs in light of the unique characteristics of Texas communities. Lack of flexibility often means excessive reporting requirements and high costs associated in complying with reporting requirements.

Some agencies such as the Texas Workforce Commission (TWC) have experienced a drop in full time equivalent employees (FTEs) brought about by major programmatic changes; other agencies' FTE levels have remained constant or increased slightly.

As a result, the devolution of programs has enabled Texas in many instances to provide benefits more efficiently to its citizens, but just as often Texas has been unable to obtain the requisite flexibility and authority for successful devolution as the federal government has

retained many controls of the programs and limited the state's ability to efficiently provide benefits to its citizens.

General Recommendations:

The Senate State Affairs Committee recognizes the need for states to have maximum authority and flexibility in administering devolved programs and to limit the amount of funds consumed in administrative compliance. The committee recommends the state achieve flexibility and authority in the devolution of federal programs in the following ways:

- (a) The committee recommends the legislature memorialize Congress to enact laws when necessary to enable the state to obtain the requisite authority and flexibility to administer programs as they are devolved from the federal government.
- (b) The committee recommends the legislature engage Congressional members and heads of federal agencies through letters requesting specific changes to federal statute and agency rules in order to obtain the requisite authority and flexibility to administer programs as they are devolved from the federal government.
- (c) The committee recommends the legislature engage Congressional members and heads of federal agencies through face-to-face meetings to request specific changes to federal statute and agency rules in order to obtain the requisite authority and flexibility to administer programs as they are devolved from the federal government.

Specific Recommendations:

The Senate State Affairs Committee recommends the legislature take the following actions or engage Congress and federal agencies, in the ways specified above, for the following specific programs listed below.

Texas Workforce Commission:

- (1) The Senate State Affairs Committee recommends the legislature engage Congress and the Department of Labor to provide consistent definitions for performance and cost categories, a uniform cost allocation policy, and uniform program years, planning cycles, and reporting methods for all

workforce programs that have been devolved to the Texas Workforce Commission.

Texas Department of Housing and Community Affairs:

- (2) The Senate State Affairs Committee recommends the legislature change the due date of the State Low Income Housing Plan and Annual Report (a state mandated plan) to coincide with those of the federal Five-Year Plan and One-Year Action Plan.
- (3) The committee recommends the legislature engage Congress and the Department of Energy to approve the use of the state System Benefit Fund as a cost sharing source for the Weatherization Assistance Program.

Texas Department of Human Services:

- (4) The Senate State Affairs Committee recommends the legislature request improvement to the federal Health Care Financing Administration funding methodology to ensure that Texas and every state receives its fair share of funding.

Texas Department on Aging:

- (5) The Senate State Affairs Committee recommends the legislature petition Congress to allow for the inclusion of ‘winter Texans’ in the Older Americans Act program’s funding formula and enlist the assistance of other states that experience winter residents for such an allowance.
- (6) The committee recommends the legislature memorialize Congress to amend the Older Americans Act Program funding formula to remove the hold-harmless clause that maintains funding in less populous states at the expense of Texas and its older citizens.

Senate Committee on State Affairs

Lieutenant Governor Rick Perry directed the Senate State Affairs Committee to, “[s]tudy the impact of devolution and other federal streamlining and efficiency efforts on major state agencies, including full-time equivalent employee (FTE) increases, major programmatic changes, and administrative costs to the state. The Committee shall also study conflicts and overlaps among agencies resulting from federally devolved functions and responsibilities.”¹ The committee held a public hearing in Lubbock on March 27, 2000, and requested written and oral testimony from a sampling of state agencies. This report summarizes the testimony and contains the findings of the committee.

Introduction

The term ‘devolution’ has been a catch-phrase in the political circles of the 1990s. Generically, the term describes how responsibility for the development and management of public policies and services is changing in the United States.² More specifically, it refers to the movement of authority and responsibility for public policies and services from the national level of government to the state level. Another feature of the recent devolution movement is a ‘second order devolution’ from the states to local governments and non-profit institutions (and some for profit contractors).³ Devolution though is not new in the political affairs of America; on the contrary, the recent round of devolution is an offspring of movements from previous years.

The New Deal and Great Society eras saw rapid expansion of federal governmental powers and programs, often to the detriment of state autonomy. After these centralizing eras, the first stirring of devolution arose. A movement known as ‘New Federalism’ developed under the Nixon administration and was

¹ Letter from Lieutenant Governor Rick Perry to the Senate Committee on State Affairs. September 7, 1999.

² “Devolution Initiative Knowing and Acting for the Common Good”. W.K. Kellogg Foundation Website. W.K. Kellogg Foundation. <<http://www.wkcf.org/Publications/devopub1310.htm>>.

³ Nathan, Richard P. “The Newest New Federalism for Welfare: Where Are We Now and Where Are We Headed?” Rockefeller Report, October 30, 1997. The Nelson A. Rockefeller Institute of Government Website. The Nelson A. Rockefeller Institute of Government. <http://www.rockinst.org/publications/rockefeller_reports/rr03.html>.

again attempted during the Reagan era. New Federalism sought to devolve federal authority to the states and localities through general revenue sharing, block grants, and decentralizing the federal government by revamping federal field offices and empowering their chief administrators.⁴

Both efforts experienced some success in devolution, but contrary centripetal developments, notably in the judicial, political, and regulatory fields, also took place undermining the devolutionary efforts.⁵ Some observers have speculated as to the factors that undercut these devolutionary efforts: the new wave of federal regulatory enactments impacting state and local governments; the perennial tendency of even conservative federal judges to interpret the commerce power, the supremacy clause, and especially Congress' conditional spending power in a nationalist way; and the secondary attention to federalism paid by both liberals and conservatives (rhetoric aside), and the public's own ambiguities (i.e., love of certain federal programs and hatred of federal taxes and administrators).⁶

The current era of devolution arose during the 104th Congress. As some assessors noted, "New Federalism is back again. But this time -- the third time -- may be the charm. New schemes to take power away from the federal government and give it to states and localities are mostly retreads from the Nixon and Reagan administrations. It's everything else that makes this time different...."⁷ The current round of devolution is now underway and its results have yet to be determined. Two centerpieces of the new movement are the Unfunded Mandate Reform Act⁸ and the Personal Responsibility and Work Opportunity Act (PRWOA).⁹ The Unfunded Mandate Reform Act purported to rein in

⁴ Walker, David B. "The Advent of an Ambiguous Federalism and the Emergence of New Federalism III." Public Administration Review May/June 1996 56(3): 272.

⁵ Ibid. at 271.

⁶ Ibid. at 273.

⁷ Rochelle Stanfield, as quoted in Walker, David B. "The Advent of an Ambiguous Federalism and the Emergence of New Federalism III." Public Administration Review May/June 1996 56(3): 273.

⁸ Pub. L. 104-4 (1995).

⁹ Pub. L. 104-193 (1996).

overreaching congressional mandates¹⁰ by restricting Washington from imposing new mandates on state or local governments without providing funds to pay for them.¹¹ PRWOA endeavored to turn welfare entitlements into block grants to the states. This legislation replaced the Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF).¹²

Devolution implicates more than just a shift of responsibility. It redefines the scope and costs of different levels of government, changes the roles and responsibilities of the commercial and nonprofit sectors, redefines the balance between personal responsibility and society's duties, and gives informed citizens the opportunity to mold change to suit local needs.¹³ Accordingly, viewpoints differ regarding the merits of such a shift. Proponents of devolution see it as letting the states construct programs that meet their individual circumstances. By permitting policy decision-making to occur at the state or local level, costs can be cut and program quality improved.¹⁴ Detractors fear it will cause a race to the bottom as states adopt programs that cut costs without regard for the welfare of the poor or society's greater good.¹⁵ Many fear that states will be easily manipulated by economic powers and that the national government is more progressive than state governments. The most cynical observers view this latest round of devolution as simply a collection of opportunistic gestures. Regardless of one's view it remains difficult to assess the impact of devolution. The system is overly complicated and the impact on the states, as well as their responses to any

¹⁰ Some commentators have already mentioned the lack of bite in this reform. "This timely but not terribly drastic measure does not bar totally the enactment of such mandates, it excludes various types of mandates, and it is prospective, not retroactive." Walker, David B. "The Advent of an Ambiguous Federalism and the Emergence of New Federalism III." Public Administration Review May/June 1996 56(3): 276.

¹¹ Hosansky, David. "Special Report - Presidential Issues: Reshaping the Federal-State Relationship." Congressional Quarterly Weekly, October 5, 1996.

¹² Pub. L. 104-193 (1996).

¹³ "Devolution Initiative Knowing and Acting for the Common Good." W.K. Kellogg Foundation Website. W.K. Kellogg Foundation. <<http://www.wkcf.org/Publications/devopub1310.htm>>.

¹⁴ "Devolution." Michigan in Brief Website. Public Sector Consultants, Inc. <<http://www.michiganinbrief.org/text/issues/issue-20.htm>>.

¹⁵ Ibid.

changes, varies.¹⁶ As well, the short term effects of devolution are likely to differ considerably from the long term effects.¹⁷

The committee received testimony from the following Texas agencies: the Texas Workforce Commission, the Texas Department of Housing and Community Affairs, the Texas Department of Human Services, the Texas Department of Health, the Texas Department on Aging, and the Texas Natural Resource Conservation Commission.¹⁸ The committee chose these agencies as a representative sample to determine what impact, if any, devolution may have had on the state of Texas.

To assist the committee in its assessment of the impact of devolution, each agency submitted program profiles which detail information regarding specific programs that the agency administers. The profiles include basic information about the programs as well as major programmatic changes that have occurred, barriers that exist to acquiring federal funds, any duplication of services with other agencies, and any plans the agencies have to deal with a decline or withdrawal of federal funds. The agencies also include, for each program, charts detailing the number of full time equivalent employees utilized and the funding breakdown of administrative costs over the past several years. Example profiles and charts may be found in the Appendix to this report.

The Impact of Devolution

Several years have passed since the embarkment of the modern movement of devolution. Besides the groundwork initiated by the 104th Congress,¹⁹ subsequent congresses have passed other pieces of legislation designed to further the

¹⁶ Gold, Steven D. "Issues Raised by the New Federalism." Urban Institute Website with permission from National Tax Journal, June, 1996. Urban Institute. <<http://newfederalism.urban.org/html/ntj.htm>>.

¹⁷ Ibid.

¹⁸ The State Auditor's Office, the Legislative Budget Board, and the Texas Commission on Health and Human Services also assisted in compiling data for the committee.

¹⁹ Pub. L. 104-4 (1995) and Pub. L. 104-193 (1996).

devolutionary trend.²⁰ The Senate State Affairs Committee studied what impact, if any, these efforts have had on the State of Texas.

Some positive aspects of devolution have been seen by Texas state agencies. Federal block grants to the state have resulted in the consolidation of several programs into a single category of programs addressing a spectrum of needs.²¹ As well, some agencies have seen a drop in FTE levels.²² Certain programs, such as the Social Services Block Grant which is administered by the Texas Department of Health, have shown an increase in flexibility²³ requisite of a true devolutionary process. The downside of these efforts has been a concomitant loss of funding.²⁴

But overall, the responses received from the agencies reflect that while some positive aspects of devolution have occurred, the delivery of authority and flexibility from the federal government to the state government that is key to successful devolution has not.²⁵ While some programs have devolved with corresponding flexibility, other programs have increased in their rigidity. Testimony received by the committee indicates several failures of the devolutionary effort. The federal government has not devolved programs to the states as Congress intended,²⁶ and both Congress and the federal agencies charged with the administration of programs have failed to provide to the states the

²⁰ See among others the Federal Financial Assistance Management Improvement Act of 1999 whose purpose is to facilitate greater coordination among those responsible for delivering federal financial assistance programs. Pub. L. 106-107.

²¹ Ruth Cedillo, Deputy Executive Director, Texas Department of Housing and Community Affairs, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 3.

²² TWC dropped in FTE employee levels from 6,200 to 3,900 since its inception in 1995 to the present. Diane Rath, Commissioner, Texas Workforce Commission, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 3-4.

²³ Jacqueline Johnson, Deputy Commissioner, Office of Programs, Texas Department of Human Services, testimony presented to the Senate State Affairs Committee, March 27, 2000.

²⁴ Bobby Halfman, Chief Financial Officer, Texas Department of Human Services, testimony presented to the Senate State Affairs Committee, March 27, 2000.

²⁵ Diane Rath, Commissioner, Texas Workforce Commission, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 1. Ruth Cedillo, Deputy Executive Director, Texas Department of Housing and Community Affairs, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 3.

²⁶ Ibid.

flexibility envisioned by the legislature and Congress.²⁷ Rather, Texas has done a better job of devolving responsibilities to the local level than the federal government has in moving responsibility to the state and local levels.²⁸

The committee's review indicates that federal devolution has fallen short of relinquishing to the states the authority and flexibility required to have truly devolved programs. For devolution to have more meaning than a catch-phrase, it must involve more than just funding changes. The concept of devolution, or granting greater local control, implies flexibility, recognizing differences between communities and implementing new initiatives.²⁹ For devolution to work, the states, and ultimately the local service providers, must have the flexibility required to administer the programs in the most efficient way possible. At the same time, the state and local service providers must be held accountable to ensure that the programs achieve their intended goals. But the requirement of accountability must include a component of trust. Performance measures must be set as indicators of accomplishment and not as straight jackets of action. Accountability and flexibility are the flip-sides of the devolution coin. Echoing Texas Workforce Commissioner Diane Rath, "[w]ith funding must come a flexibility to respond and a trust in that response..... The point of devolution of programs, either from the federal to the state level or the state to the local level, is to provide better service to customers."³⁰

TEXAS WORKFORCE COMMISSION

The Texas Workforce Commission (TWC) was formed in 1995 when the legislature merged 28 programs from 10 agencies with the intent to provide a

²⁷ Diane Rath, Commissioner, Texas Workforce Commission, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 7.

²⁸ Ibid. at 5.

²⁹ Ibid. at 4.

³⁰ Ibid. at 5.

seamless delivery of services to clients, employers and job seekers.³¹ The delivery of services was decentralized to a system of 28 local workforce development boards, the final one of which became operational in December of 1999.³² In 1998, Congress passed the Workforce Investment Act³³ which requires all states to adopt a similar system of workforce boards and local service delivery.³⁴

The state has experienced some success in its shift from the state to local level.³⁵ Computer and accounting systems have been made compatible and human resource and other policies made consistent.³⁶ The shift from service delivery by state employees to private providers has initiated a drop in TWC Full Time Equivalent employee levels from 6,200 to 3,900 employees since its inception in 1995.³⁷ The boards provide one-stop centers that include all the agencies and services a client needs for workforce development.³⁸

While seeing success from the state to local level, TWC has experienced problems at the federal level that inhibit service delivery. Federal agencies have not granted the flexibility envisioned by both the legislature and Congress.³⁹ For example, the Department of Labor has been inflexible regarding the program year used.⁴⁰ This inflexibility prevents TWC from using the same time period for program and fiscal

³¹ Ibid. at 2.

³² Ibid. at 2.

³³ Pub. L. 105-220 (1998).

³⁴ Diane Rath, Commissioner, Texas Workforce Commission, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 2.

³⁵ Ibid. at 3.

³⁶ Ibid. at 3.

³⁷ Ibid. at 3.

³⁸ Ibid. at 4.

³⁹ Ibid. at 7.

⁴⁰ Ibid. at 7.

years, which makes financial reporting very difficult at the state and local level.⁴¹ The department has also implemented numerous performance measures.⁴² Rather than providing a few common sense performance measures to determine the effectiveness of programs, the Department of Labor requires the TWC to argue for any changes in performance measures.⁴³

Differing definitions and terms relating to performance measurement and reporting compound miscommunication problems among various federal programs.⁴⁴ Clear definitions across federal programs related to workforce development would increase efficiency and provide better service.⁴⁵ For example, differing definitions of administrative costs conflict with each other and differing interpretations surrounding confidentiality issues make it expensive and problematic to negotiate agreements for data sharing between federal programs.⁴⁶ Despite this, federal guidelines do not exist and Congress requires performance, reporting, eligibility and other requirements that assume availability of data from outside entities across federal programs.⁴⁷ Comprehensive planning remains difficult given the complicated group of funding years, program years and fiscal years.⁴⁸ Singular start dates for all federal programs related to the same goal, such as workforce development, and tying programs to the state fiscal year would provide increased planning collaboration and goal setting across all programs.⁴⁹

⁴¹ Ibid. at 7.

⁴² Ibid. at 7.

⁴³ Ibid. at 7-8.

⁴⁴ “Clarification of Issues,” submitted by the Texas Workforce Commission to the Senate State Affairs Committee.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

The Texas Department of Housing and Community Affairs (TDHCA) was formed in 1991 through the merger of the Texas Department of Community Affairs and the Texas Housing Agency and the transfer of the Community Development Block Grant Program from the federal Department of Commerce.⁵⁰ In September of 1995 the regulation of the manufactured housing industry also was transferred from the Texas Department of Licensing and Regulation.⁵¹ A major portion of the agency's funding comes from federal programs.⁵² TDHCA, through administration of these programs, assists local governments in providing essential public services, overcoming financial, social and environmental problems, providing housing needs for low and moderate income families, as well as preserving, developing, and redeveloping neighborhoods and communities.⁵³

Creation of block grants where several federal programs were consolidated into a single category of programs addressing a spectrum of needs were the initial efforts toward devolution.⁵⁴ The concern regarding the consolidation of programs is that it creates a possibility for a decrease in funding.⁵⁵ TDHCA experienced mixed results regarding the efforts of devolution. Some actions taken at the federal level have given states flexibility in administering programs.⁵⁶ In 1992 the Department of Housing and Urban Development (HUD) issued regulations regarding the States' Small Cities Community Development Block Grant Program. The states benefitted from regulations that gave the 'maximum feasible deference' which allowed states

⁵⁰ Ruth Cedillo, Deputy Executive Director, Texas Department of Housing and Community Affairs, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 2.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid. at 3.

⁵⁵ Ibid. at 9.

⁵⁶ Ibid. at 4.

flexibility in interpreting regulations and statutory requirements.⁵⁷

Despite experiencing some positive steps toward devolution, contradictory actions have also been experienced. Other actions at the federal level have increased monitoring responsibilities and added requirements to provide non-federal matches.⁵⁸ Further, implementation of new information and disbursement systems will result in additional costs to the agency, and implementation of a consolidated planning process will require the allocation of additional staff resources.⁵⁹ Examples of some of these instances are: HUD statutorily maintaining responsibility for distribution and allocation of funding for larger cities (reducing the allocations for Texas),⁶⁰ HUD establishing new requirements for certification of Public Housing Authorities' goals and objectives along with new requirements regarding their relation to the agency's State Consolidated Plan despite TDHCA not having official authority over the PHA's,⁶¹ and recent proposals by HUD to create "Optional Entitlement Communities" which would receive funds directly from HUD further reducing the state's allocation.⁶² These actions led TDHCA to report that "[i]n some respects, devolution, as it was intended to occur, did not occur as originally anticipated."⁶³

TDHCA states that some reporting required by the state and federal government is repetitive. HUD requires a consolidated plan to be submitted by the TDHCA.⁶⁴ The plan reports on four formula grants: the Community Development Block Grant,

⁵⁷ Ibid. at 4.

⁵⁸ Ibid. at 4.

⁵⁹ Ibid. at 4.

⁶⁰ Ibid. at 3.

⁶¹ Ibid. at 8.

⁶² Ibid. at 9.

⁶³ Ibid. at 4.

⁶⁴ 24 CFR Sec. 91.305-91.330; "Response to Senate Committee on State Affairs" submitted by the Texas Department of Housing and Community Affairs' to the Senate State Affairs Committee.

the HOME Investment Partnerships Program, the Emergency Shelter Grant Program and the Housing Opportunities for Persons with AIDS (HOPWA) Program.⁶⁵ The Consolidated Plan includes the following components:⁶⁶

- *The Five-Year Consolidated Plan for the State of Texas.* This document is prepared every three to five years. It includes a needs assessment, intended use of funds, and program performance. By federal statute, it is due 45 days before the beginning of the program year. The program year begins February 1, making December 18 the due date. The department must hold public hearings associated with this document.
- *The State of Texas Consolidated Plan One-Year Action Plan (OYAP).* This document is supplemental to the Five-Year Plan and contains the intended use of funds for each year. By federal statute, it is due December 18th (i.e., 45 days before the beginning of the program year.) The department must hold public hearings associated with completing the OYAP. The OYAP is replaced by the Five-Year Plan in the years the FYP is due.
- *The State of Texas Consolidated Plan Annual Performance Report (APR).* This document is supplemental to the *Five-Year Plan*. It summarizes program performance for the past year. By federal statute, it is due 90 days after the close of the Program Year. The program year ends January 31, making the due date May 1. The *APR* is replaced by the *Five-Year Plan* in the year the *Five-Year Plan* is due.

*The State Low Income Housing Plan and Annual Report (SLIHP)*⁶⁷ is required by the department's enabling legislation.⁶⁸ While the Consolidated Plan covers only three

⁶⁵ "Response to Senate Committee on State Affairs," submitted by the Texas Department of Housing and Community Affairs to the Senate State Affairs Committee.

⁶⁶ Ibid.

⁶⁷ Sections 2306.072 and 2306.0721, Government Code.

⁶⁸ "Response to Senate Committee on State Affairs," submitted by the Texas Department of Housing and Community Affairs to the Senate State Affairs Committee.

department programs, the *SLIHP* covers all programs.⁶⁹ The *SLIHP* covers all the material found in the *Five Year Plan*, the *OYAP* and *APR* in one publication.⁷⁰ The same information requested from the four formula grants included in the Consolidated Plan is requested for all department programs for the *SLIHP*.⁷¹ The *SLIHP* has additional requirements beyond the federal requirements.⁷² By state statute, the *SLIHP* is due every year to the Texas Legislature by March 31.⁷³ As with the Five-Year Plan and the *OYAP*, the department must hold public hearings associated with the *SLIHP*.⁷⁴

The Consolidated Plan and the *SLIHP* can not be easily consolidated.⁷⁵ But the due date of the *SLIHP* could be changed to match that of the *Five Year Plan* and the *OYAP*, resulting in integration of duplicative work and cost savings to the agency.⁷⁶ The potential negative consequences of integrating remains that the *SLIHP* requires more information than the other plans.⁷⁷ Including the extra information in the federal report may cede jurisdiction to HUD for monitoring these programs even though they are not funded by HUD.⁷⁸ Not integrating the plans and only changing the due dates would create a labor intensive work period due to the separate formatting requirements for each plan.⁷⁹ On the other hand, duplicative work currently separated by several months will be integrated and cost savings will be realized through coincident public hearings. But this will integrate duplicative work (which is currently separated by several

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

months) and provide cost savings through coincident public hearings.⁸⁰

New federal legislation requires the state to provide 25 percent cost share for the Weatherization Assistance for Low Income Persons Program.⁸¹ One potential funding source pointed out by TDHCA is the System Benefit Fund (SBF) created by the 76th Legislature and available January 1, 2002.⁸² The SBF will be funded through a non-bypassable utility charge set by the Public Utility Commission, the agency currently developing rules for the SBF.⁸³ One of the uses of the SBF can be for energy efficiency programs administered by TDHCA in coordination with existing weatherization programs.⁸⁴ Currently, state statute allows for the use of the SBF to assist low-income electric customers.⁸⁵ Further, TDHCA reports that using the SBF dollars to match the federal weatherization assistance program will not reduce the amount of SBF funds available or have any negative impact on the SBF.⁸⁶ However, the Department of Energy must approve the use of the SBF as a source of cost-sharing for the program.⁸⁷

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² “Response to Senate Committee on State Affairs,” submitted by the Texas Department of Housing and Community Affairs to the Senate State Affairs Committee; Section 39, Chapter 405, Acts of the 76th Legislature, Regular Session, 1999 (Section 39.903, Utilities Code).

⁸³ “Response to Senate Committee on State Affairs,” submitted by the Texas Department of Housing and Community Affairs to the Senate State Affairs Committee.

⁸⁴ “Response to Senate Committee on State Affairs,” submitted by the Texas Department of Housing and Community Affairs to the Senate State Affairs Committee; Section 39, Chapter 405, Acts of the 76th Legislature, Regular Session, 1999 (Section 39.903, Utilities Code).

⁸⁵ Section 39.903 (e), Utilities Code

⁸⁶ “Response to Senate Committee on State Affairs,” submitted by the Texas Department of Housing and Community Affairs to the Senate State Affairs Committee.

⁸⁷ Ibid.

In the 1930s, the Texas Constitution was amended in order to utilize federal money to finance new public assistance programs.⁸⁸ The agencies administering these programs evolved into the Department of Human Services (DHS).⁸⁹ DHS mostly administers entitlement funds.⁹⁰

DHS recognized two contrary examples of how the federal government has devolved its public assistance programs. A good example of what can be achieved with devolution is the Social Services Block Grant (formerly Title XX).⁹¹ This program has increased flexibility and requires minimal reporting, which allows the state to use the funds to achieve the Title XX intent.⁹² Along with the increased flexibility though, there has been a continual decline in funding (from \$200 million to \$136 million since 1981).⁹³ As a result, DHS has had to use funds from other sources to administer the program.⁹⁴

On the opposite end of the spectrum, some new federal enactments have decreased the states flexibility in administering public assistance programs. The TANF program has experienced increased reporting requirements and raised performance expectations.⁹⁵

DHS brought to the attention of the committee that the potential problem with devolution was ensuring that the funding sources do not disappear.⁹⁶ The key to

⁸⁸ "Agency History 1930-1999," Texas Department of Human Services Website, May 8, 2000. Texas Department of Human Services. <<http://www.dhs.state.tx.us/about/history.html>>

⁸⁹ Ibid.

⁹⁰ Jacqueline Johnson, Deputy Commissioner, Office of Programs, Texas Department of Human Services, testimony presented to the Senate State Affairs Committee, March 27, 2000.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Bobby Halfman, Chief Financial Officer, Texas Department of Human Services, testimony presented to the Senate State Affairs Committee, March 27, 2000.

⁹⁴ Jacqueline Johnson, Deputy Commissioner, Office of Programs, Texas Department of Human Services, testimony presented to the Senate State Affairs Committee, March 27, 2000.

⁹⁵ Ibid.

⁹⁶ Ibid.

devolution remains what will be expected by the federal government for programs.⁹⁷ Will better administration of the funds be expected or will there also be an assumption of the funding role for the program? Devolution has resulted in greater responsibility at the local level to provide for needs that the federal government has stopped funding.⁹⁸

The DHS program profiles indicate some specific areas of interest. First, the Barriers to Obtaining Additional Funds portion of the Long Term Care Regulatory (Survey and Certification) profile indicates that the current levels of approved funding do not pay for the work necessary to complete the regulatory activities as directed by the federal Health Care Financing Administration (HCFA).⁹⁹ While HCFA is reportedly working on improving their methodology for funding the program, it has run into problems in finalizing its approach and certain anomalies still exist.¹⁰⁰ The funding methodology used by HCFA to distribute Medicare funding for state programs is based on an historical spending pattern that has placed Texas at a relative disadvantage.¹⁰¹ Texas began administering Medicare programs later than many other states.¹⁰² The states that implemented Medicare programs relatively early established higher base funding levels.¹⁰³ Over the years, HCFA has historically funded states according to base funding levels, thus funds have remained disproportionate for years.¹⁰⁴

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Barriers to Obtaining Additional Federal Funds portion, Long Term Care Regulatory (Survey & Certification) - Medicare profile, Texas Department of Human Services, provided for the Senate State Affairs Committee Hearing, March 27, 2000.

¹⁰⁰ Barriers to Obtaining Additional Federal Funds portion, Long Term Care Regulatory (Survey & Certification) - Medicare profile, Texas Department of Human Services, provided for the Senate State Affairs Committee Hearing, March 27, 2000; Texas Department of Human Services. "Response to Senate State Affairs Inquiry, June 13, 2000," submitted by the Texas Department of Human Services to the Senate State Affairs Committee.

¹⁰¹ "Response to Senate State Affairs Inquiry, June 13, 2000," submitted by the Texas Department of Human Services to the Senate State Affairs Committee.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

Second, in the Any Suggestions portion of the Temporary Assistance to Needy Families profile, the agency mentions that Texas is operating under a waiver until 2002.¹⁰⁵ The agency mentions that options available to the state in transitioning from the state waiver to federal law need to be considered during the next legislative session.¹⁰⁶ The committee notes that these options are generally under the purview of both the Senate and House Committees on Human Services. The committee also notes that the Senate and House Committees on Human Services are looking into the issues raised by this transition during this interim. This committee looks forward to hearing the recommendations resulting from these studies.

TEXAS DEPARTMENT OF HEALTH

The Texas Department of Health (TDH) is a large, complex agency with a fundamental mission to protect and promote the health of the people of Texas.¹⁰⁷ All TDH programs have been designed toward that end.¹⁰⁸ The agency dates back to 1879, when the position of the State Health Officer was established, and has gone through various changes over the years.¹⁰⁹

While public health institutions began at the local level, both the federal and state government are now major players in the public health field.¹¹⁰ The federal government's role began in the 1920s and expanded in both requirements and funding through the 1960s.¹¹¹ By the 1980s though, a new federal philosophy began shifting more responsibility to the states while decreasing federal funds. This practice

¹⁰⁵ Any Suggestions portion, Temporary Assistance to Needy Families profile, Texas Department of Human Services, provided for the Senate State Affairs Committee Hearing, March 27, 2000.

¹⁰⁶ Ibid.

¹⁰⁷ "Self Evaluation Report to the Sunset Advisory Commission." September 1997 Texas Department of Health Website. June 29, 2000. Texas Department of Health. <<http://www.tdh.state.tx.us/sunset/sunset.htm>>.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

continues today.¹¹²

TDH reported several categories of programs. The differing categories create their own concerns regarding the specific programs. One of the categories includes programs that underwent a reduction in federal funding.¹¹³ This loss of funding equates to a loss of services under these programs.¹¹⁴ A second category are those programs where no funding increases or regulatory increases occurred.¹¹⁵ Under these programs, Texans also experienced a loss of service because the increase in population was not matched by a corresponding increase in funding.¹¹⁶ A third category of programs experienced no increase in requirements but received a steady increase in funds.¹¹⁷ Examples of this category of programs can be seen in the HIV prevention grant. A fourth category of programs involved those programs that lost their flexibility.¹¹⁸ Under these programs the federal government has increased compliance requirements but provided the same amount of funding.¹¹⁹

TEXAS DEPARTMENT ON AGING

The Texas Department on Aging administers the Older Americans Act program (OAA) with the basic intent of using limited funds to create partnerships and develop resources, primarily at the local level, to enable older persons to lead independent and

¹¹² Ibid.

¹¹³ John Evans, Deputy Commissioner, Texas Department of Health, testimony presented to the Senate State Affairs Committee, March 27, 2000.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

dignified lives.¹²⁰ The OAA program's emphasis is on the local level and encourages volunteerism and partnering whenever possible to enhance resources and involve seniors in community service.¹²¹ Funding is based on the number of persons in the state aged 60 and older.¹²² Census figures are used to determine this figure and the allocation is equivalent to a block grant.¹²³

Several factors work against Texas in the funding of this program. First, many older Americans who come to Texas during the winter and avail themselves of services provided under the Older Americans Act program are not accounted for by the federal funding formula because they are not residents of the state.¹²⁴ Second, the federal program for the Older Americans Act program contains a hold-harmless clause that unfairly funds states with smaller populations of seniors than Texas.¹²⁵ Hold-harmless clauses maintain funding levels for these states despite their drop in relative amounts of older Americans compared to Texas.

TEXAS NATURAL RESOURCE AND CONSERVATION COMMISSION

In 1993 the Texas Air Control Board and the Texas Water Commission were consolidated into the Texas Natural Resource and Conservation Commission (TNRCC).¹²⁶ Since that time, the TNRCC has been Texas' lead environmental

¹²⁰ Mary Sapp, Executive Director, Texas Department on Aging, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 1.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Mary Sapp, Executive Director, Texas Department on Aging, testimony presented to the Senate State Affairs Committee, March 27, 2000, page 1; Barriers to Obtaining Additional Federal Dollars portion, Older Americans Act Program profile, Texas Department on Aging, provided for the Senate State Affairs Committee Hearing, March 27, 2000.

¹²⁵ Ibid.

¹²⁶ "Origins of the TNRCC" Texas Natural Resource Conservation Commission Website. July 15, 2000. Texas Natural Resource Conservation Commission. <<http://www.tnrcc.state.tx.us/tnrcchistory.html>>.

agency.¹²⁷ The agency has continually taken over federal environmental programs since its inception. In 1998, the TNRCC completed the last legal requirements for the state to take over the last major available program, the Waste Water Permitting program under the Clean Water Act.¹²⁸ Also, the TNRCC has received provisional delegation but not final delegation of the Federal Operating Permits program.¹²⁹ These programs have been completely devolved, but as testified, this doesn't necessarily equate with needed flexibility.¹³⁰

The TNRCC largely funds its programs through permit fees,¹³¹ but still receives a substantial amount of funds through federal programs. In 1997, 17 grants were combined to allow states to direct funds to their targeted programs.¹³² The TNRCC also enters into a Performance Partnership Agreement with the EPA where they negotiate every year and set priorities, both state and federal, for how funds are to be used in enforcement of environmental policies.¹³³ While increased flexibility has occurred in some programs, the TNRCC's experience with devolution has been largely the same as other agencies - some programs have seen increased flexibility while other programs have not. The federal programs that the TNRCC administers fall into three basic categories. The first category is made up of those programs where the federal government generally cooperates with the states.¹³⁴ For example, in the Petroleum Storage Tank Program (PST),¹³⁵ the EPA allows the agency the latitude to determine how to manage the program and what technical decisions to make for the majority of

¹²⁷ Ibid.

¹²⁸ Margaret Hoffman, Director, Environmental Law Division, Texas Natural Resource Conservation Commission, testimony presented to the Senate State Affairs Committee, March 27, 2000.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid. This also covers permitting, non-point source, monitoring, etc., and runs the gamut of what the TNRCC does.

¹³⁴ Ibid.

¹³⁵ Ibid.

the workload.¹³⁶ The second category is made up of programs where a federal statute itself is prescriptive.¹³⁷ Neither the federal governmental agencies nor the states have flexibility in administering the programs.¹³⁸ An example of this category is the Hazardous Waste Management Program (RCRA).¹³⁹ The third category represents those programs where federal agencies impede the delivery of flexibility to the states. For example, since delegation under the National Pollution Discharge Elimination System, transition issues and federal oversight have resulted in delays and increased complexity in the permitting process.¹⁴⁰ The EPA has requested changes to the procedures used by the TNRCC to administer the program.¹⁴¹ These changes are from those procedures used by the EPA when it administered the program and are not required by federal law.¹⁴²

STATE AUDITOR'S OFFICE

The Federal Financial Assistance Management Improvement Act of 1999¹⁴³ requires all federal agencies to develop plans for streamlining procedures involved in federal grant programs. This act requires the agencies to consult with state and local governments. On behalf of the State of Texas, the State Auditor's Office began an initiative to advise federal agencies of procedures that should be streamlined. The SAO plans to present this information to the agencies in the fall of 2000. The act requires the federal agencies to complete their plans for streamlining procedures by May, 2001.

¹³⁶ Trend Analysis portion, Petroleum Storage Tank Program profile, Texas Natural Resource Conservation Commission, provided for the Senate State Affairs Committee Hearing, March 27, 2000.

¹³⁷ Margaret Hoffman, Director, Environmental Law Division, Texas Natural Resource Conservation Commission, testimony presented to the Senate State Affairs Committee, March 27, 2000.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Trend Analysis portion, National Pollution Discharge Elimination System profile, Texas Natural Resource Conservation Commission, provided for the Senate State Affairs Committee Hearing, March 27, 2000.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107 (1999).

Findings:

While the federal government has devolved numerous programs to the state, the handing over of authority and flexibility which is key to successful devolution has not occurred. As a consequence, Texas has experienced mixed results from devolution.

Some programs such as the Social Services Block Grant were handed down with an amount of flexibility and authority that has allowed the state to better meet the goals of the program given Texas' unique characteristics. Nevertheless, the cost of attaining flexibility often has been a loss of funding from the federal level.

The federal government has devolved other programs only to a limited extent, restricting the state's ability to efficiently administer such programs in light of the unique characteristics of Texas communities. Lack of flexibility often means excessive reporting requirements and high costs associated in complying with reporting requirements.

Some agencies such as the TWC have experienced a drop in full time equivalent employees (FTEs) brought about by major programmatic changes; other agencies' FTE levels have remained constant or increased slightly.

As a result, the devolution of programs has enabled Texas in many instances to provide benefits more efficiently to its citizens, but just as often Texas has been unable to obtain the requisite flexibility and authority for successful devolution as the federal government has retained many controls of the programs and limited the state's ability to efficiently provide benefits to its citizens.

General Recommendations:

The Senate State Affairs Committee recognizes the need for states to have maximum authority and flexibility in administering devolved programs and to

recommends the state achieve flexibility and authority in the devolution of federal programs in the following ways:

- (a) The committee recommends the legislature memorialize Congress to enact laws when necessary to enable the state to obtain the requisite authority and flexibility to administer programs as they are devolved from the federal government.
- (b) The committee recommends the legislature engage Congressional members and heads of federal agencies through letters requesting specific changes to federal statute and agency rules in order to obtain the requisite authority and flexibility to administer programs as they are devolved from the federal government.
- (c) The committee recommends the legislature engage Congressional members and heads of federal agencies through face-to-face meetings to request specific changes to federal statute and agency rules in order to obtain the requisite authority and flexibility to administer programs as they are devolved from the federal government.

Specific Recommendations:

The Senate State Affairs Committee recommends the legislature take the following actions or engage Congress and federal agencies, in the ways specified above, for the following specific programs listed below.

Texas Workforce Commission:

- (1) The Senate State Affairs Committee recommends the legislature engage Congress and the Department of Labor to provide consistent definitions for performance and cost categories, a uniform cost allocation policy, and uniform program years, planning cycles, and reporting methods for all workforce programs that have been devolved to the Texas Workforce Commission.

Texas Department of Housing and Community Affairs:

- (2) The Senate State Affairs Committee recommends the legislature change the due date of the State Low Income Housing Plan and Annual Report (a state mandated plan) to coincide with those of the federal Five-Year Plan and One-Year Action Plan.
- (3) The committee recommends the legislature engage Congress and the Department of Energy to approve the use of the state System Benefit Fund as a cost sharing source for the Weatherization Assistance Program.

Texas Department of Human Services:

- (4) The Senate State Affairs Committee recommends the legislature request improvement to the federal Health Care Financing Administration funding methodology to ensure that Texas and every state receives its fair share of funding.

Texas Department on Aging:

- (5) The Senate State Affairs Committee recommends the legislature petition Congress to allow for the inclusion of ‘winter Texans’ in the Older Americans Act program’s funding formula and enlist the assistance of other states that experience winter residents for such an allowance.
- (6) The committee recommends the legislature memorialize Congress to amend the Older Americans Act Program funding formula to remove the hold-harmless clause that maintains funding in less populous states at the expense of Texas and its older citizens.

Appendix I

Agency Program Profiles

Appendix II

Sample Legislation